(3)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGARH)

Single Bench

SECOND APPEAL No. 589 **/2004**

APPELLANT
Defendant

Amarjeet Singh,
Aged about 54 years, S/o Sohan Singh, R/o Near Viddhut Mandal Office Liquor Shop,
Ward No. 10, Station Road,
Dongargarh,
Distt. Rajnandgaon (C.G.)

P.R. No. 2988 dt. 17.12.04
Presented by Shri D.N. Pradhan
dated 17.12.04

VERSUS

RESPONDENT
Plaintiff

Gurucharan Singh Bhatiya Aged about 52 years S/o Nanak Singh Bhatiya, R/o Budhwari Para
Ward No. 12 Dongargarh,
Distt. Rajnandgaon

SECOND APPEAL UNDER SECTION 100 OF THE CODE OF CIVIL PROCEDURE 1908

(22)

HIGH COURT OF CHHATTISGARH : BILASPUR

Second Appeal No. 689 of 2004

Appellant/ Defendant : **Amarjeet Singh**

Vs.

Respondent/ Plaintiff : **Gurucharan Singh Bhatiya**

Appellant/defendant by Shri D.N.Prajapati, Advocate.
Respondent/Plaintiff by Shri Ajit Singh, Advocate.

ORDER
(Passed on 21/12/05)

Dhirendra Mishra, J

This is the defendant's second appeal under Section 100 of the Code of Civil Procedure as the suit for eviction and damages preferred by the plaintiff has been decreed and the appeal preferred by the defendant has been dismissed by the impugned judgment and decree. (Parties shall hereinafter be referred to as per their description before the trial Court.)

2. The plaintiff filed a civil suit with an averment that the defendant was his licensee over the suit property and he was residing there with the permission of the plaintiff. However, the defendant carried out some alteration and thereby damaged the suit property whereupon the plaintiff terminated the licence w.e.f. February 2000 and informed the same by telegram and registered notice dated 31.03.2000. It was further pleaded that the father of the plaintiff late Shri Nanak Singh purchased the suit property and after his death, the property was given to the plaintiff by other family members. The defendant refused to receive the notice dated 15.03.2000, by which the plaintiff cancelled his licence and thereafter the suit for eviction and damages at the rate of Rs.20 per day from 01.04.2000 was filed.

(29)

3. The defendant denied the averments of the plaint and stated that he has perfected his title by adverse possession as he was undisputedly residing in the suit house since 1935 as tenant of the vender Laxminarayan till 1971. He had also contracted to purchase the property from vender Shakuntala Bai, however, father of the defendant somehow managed to purchase the same. The defendant and his parents continued to be in possession of the suit property and they declined to hand over the vacant possession of the suit house to the father of the plaintiff and they had also declined the ownership of the plaintiff. It is also stated that the defendant started considering himself to be the owner of the property and the father of the plaintiff also acknowledged the parents of the defendant as owner of the suit house since the house in question was not mutated in the name of father of the plaintiff till the year 2000. Thus the defendant resided in the suit house as owner without any interruption and they had never been licensee of the plaintiff. It was also pleaded that the defendant and his parents obtained electric connection in their names and they dug a tube well and constructed a slabbed house by investing more than Rs.50,000/- and accordingly, they have perfected their title by adverse possession and the suit preferred by the plaintiff is barred by law of limitation.

4. On the basis of pleading of the respective parties, the trial Court framed various issues and decreed the suit in favour of the plaintiff by recording a finding that the defendant was residing as licensee of the plaintiff over the suit house and caused damage to the suit house whereupon the licence was validly revoked by the plaintiff and that the defendant has not perfected his title by adverse possession and accordingly decreed the suit with costs.

5. The appeal preferred by the defendant has been also dismissed by the impugned judgment and decree passed by the lower appellate Court.

6. Learned counsel for the appellant/defendant has challenged the judgments of both the Courts below on the ground that though the plaintiff has failed to prove as he did not adduce any documentary evidence to establish that the defendant was his licensee, even then the Courts below have arrived to an erroneous conclusion which is contrary to the evidence

(30)

available on record that the defendant was the licensee of the plaintiff. Learned counsel for the appellant further submits that the substantial question of law involved in this appeal is-'whether in the absence of any evidence of licence and in view of the fact that the defendant was denying title of the plaintiff since 1971 and claiming hostile title over the suit property to that of the plaintiff for a continuous period of 30 years, the suit filed in the year 2001 was barred by law of limitation and whether the appellant/defendant has perfected his title by adverse possession?'

7. Learned counsel for the appellant relies upon the judgment of the Hon'ble Supreme Court reported in **1997(II) M.P.W.N. 32** in the matter of **Tulsi Vs. Smt. Paro** and submits that where a person is in possession for a continuous period of 30 years, he cannot be termed as licensee.

8. I have heard learned counsel for the parties.

9. Both the Courts below on the basis of pleading of the respective parties and evidence available on record have arrived at the conclusion that the parents and grant-parents of defendant were the tenants of vender Laxminarayan from 1935 to 1971 and the suit house was purchased by father of the plaintiff through registered sale deed dated 01.11.1971 and after purchasing the suit house, the plaintiff had asked for vacant possession and the fact of transfer of ownership was known to the parents of the defendant. Both the Courts below on the basis of oral evidence have arrived to a concurrent finding that after the suit house was purchased by father of the plaintiff, the father of the defendant had sought permission to live in the said house and they had promised that they shall vacate the same and accordingly, it has been held that oral license has been established. The above finding of the Courts below on the basis of detailed analysis and proper appreciation of oral and documentary evidence available on record, cannot be interfered at the stage of second appeal. The question whether the defendant was licensee of the plaintiff is a finding of fact and the same has been decided in favour of the plaintiff and against the defendant.

10. The second proposition of the defendant that he was residing in the suit premises as owner of the house, is contrary to the pleadings and evidence

available on record as he himself admitted that his parents and grand-parents were the tenants of the previous owner who subsequently transferred the house to the plaintiff in the year 1971 and the defendants never purchased the same, therefore the defendant cannot claim that he resided in the suit house as owner solely on the ground that while residing in the said house, he obtained electric connection, dug bore will and made some construction of permanent nature.

11. The judgment in the matter of Tulsi Vs. Smt. Paro (supra) relied upon by learned counsel for the appellant, has no application in the instant case as in the above cited case, the name of the appellant had been shown in the revenue records for a period of 20 years as Garmaarusi which means 'tenant at will'. However, in the present case there is no document to this effect and as already held that both the Courts below on the basis of oral evidence available on record have arrived at the conclusion that the plaintiff permitted the ancestors of the defendant to continue in possession of the suit premises as licensee and the license was ultimately terminated in the year 2000 when the defendant started addition and alteration of the suit premises to the detriment of the interest of plaintiff.

12. Thus on the basis of the aforesaid analysis, this Court is of the opinion that the impugned judgment and decree affirming the judgment and decree passed by the trial Court is based on proper appreciation of evidence available on record. No question of law much less substantial question of law is involved for adjudication of this appeal. The appeal being devoid of any substance deserves to be dismissed at the motion stage itself and it is accordingly dismissed.

Sd/-
DHIRENDRA MISHRA
Judge